

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION  
CASE NO. 4:16-CV-00084-M

JACK HOWARD COX, SR., *Executor of*  
*the Estate of Percy Ray Cox, Deceased,*

Plaintiff,

v.

AGCO Corp. *et al.*,

Defendants.

**ORDER**

The court has been advised that certain parties have settled all matters in controversy among them. *See* Joint Status Report, DE-448 (Defendant Borg-Warner Morse Tec, Inc.); Notice of Settlement, DE-454 (Defendant Honeywell International, Inc.); Joint Status Report, DE-455 (Defendant Ford Motor Company). Therefore, this matter is DISMISSED as to Defendants Borg-Warner Morse Tec, Inc., Honeywell International, Inc., and Ford Motor Company, subject to the right of any party to file a motion to reopen the case should settlement not be consummated within forty-five (45) days hereof. The parties are DIRECTED to file their Stipulation of Dismissal on or before Monday, October 5, 2020. Furthermore, all outstanding motions pertaining to these Defendants [DE-315; DE-316; DE-321; DE-325; DE-338; DE-355; DE-436] are DENIED AS MOOT.

Plaintiff's Motion to Dismiss Without Prejudice Defendant Maremont Corporation [DE-442] is GRANTED. A Suggestion of Bankruptcy [DE-402] was filed on January 22, 2019, and served to stay judicial proceedings against Defendant Maremont Corporation. Plaintiff's motion for voluntary dismissal is governed by Rule 41 of the Federal Rules of Civil Procedure. Because Defendant Maremont Corporation filed an answer, plaintiff no longer has the absolute right to a

dismissal without prejudice. Under Rule 41(a)(2), the action may now be dismissed only by court order, on such terms as the court considers proper. Defendant Maremont Corporation has not filed any opposition to Plaintiff's motion and the time for response has now expired. Local Civil Rule 7.1(f)(1). In the absence of any reason articulated by Defendant Maremont Corporation that it would suffer prejudice as a result of a voluntary dismissal, the court will not presume the existence of prejudice.

As to Defendant Prestolite Performance, a Default Order by Clerk was filed on November 13, 2017 [DE-187]. No further action has been taken with regards to this Defendant. Plaintiff is DIRECTED to file a Stipulation of Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) or else apply to the court for a default judgment, which may necessitate a hearing in accordance with Federal Rule of Civil Procedure 55(b)(2), as to Defendant Prestolite Performance on or before Monday, October 5, 2020.

As there appears to be no further reason at this time to maintain the file as an open one for statistical purposes, this case is removed from the active docket.

SO ORDERED this the 20<sup>th</sup> day of August, 2020.

  
RICHARD E. MYERS II  
U.S. DISTRICT COURT JUDGE